

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/646,983	Confirmation No.	1148
Applicant	:	Hannel		
Filed	:	08/21/2003		
TC/A.U.	:	2442		
Examiner	:	Benoit, Esther		
Docket No.	:	I004-P03079US		
Customer No.	:	33356		

Pre-Appeal Brief Request for Review

Dear Sir:

This request is being filed with a Notice of Appeal.

Please consider the remarks beginning on page 2 of this paper.

REMARKS

Claims 1 to 45 are pending. Claims 1-45 were rejected in a final Office action mailed March 18, 2010.

Appeal may be taken from the rejections of independent claims 1, 15, 21, 27, and 35. Dependent claims will stand or fall with the respective independent claim.

Claim Rejections - 35 USC § 102

Independent claims 1, 15, 21, 27, and 35 stand finally rejected under 35 USC § 102(e) as anticipated by *Gerrevink et al.* (US 2003/0012141 A1). The fundamental principle of claim rejections under 35 USC § 102 is stated in MPEP §2131 as follows:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

It is respectfully submitted that this rejection is in error because *Gerrevink* does not expressly or inherently describe each and every of the claims.

Claims 1, 15, and 21

Independent claim 1 recites a method for testing a system under test. Independent claims 15 and 21 recite apparatus for performing the method of claim 1. It is respectfully submitted that the rejection of claims 1, 15, and 21 is in error because *Van Gerrevink* does not expressly or inherently describe the elements “setting up for engaging in transactions with the system under test” and “engaging in transactions with the system under test concurrently with ... simulating the realistic mix of network traffic” (emphasis added).

The Merriam Webster Unabridged Dictionary (<http://unabridged.merriam-webster.com>) contains the following definition of the term “transaction”: “a communication action or activity

involving two parties or two things reciprocally affecting or influencing each other”. The Applicant submits that a person of average skill in the art of communications systems would clearly understand claims 1, 15, and 21 to recite setting up for and conducting bidirectional interactive communications between the test apparatus and the system under test.

To conducting transactions, a test apparatus must both transmit data to and receive data from a system under test. However, the traffic generator of *Gerrevink* only generates packets and transmits the generated packets to the system under test, but does not receive packets from the system under test. Thus the traffic generator of *Gerrevink* cannot be considered to conduct transactions.

More complete arguments supporting the patentability of claims 1, 15, and 21 were made in a response submitted on January 28, 2010 (page 13, last paragraph, to page 16, first paragraph). In the Final Office Action mailed March 18, 2010, the Examiner responded to Applicant’s arguments as follows:

The argument has been considered but is not persuasive. In paragraph 0037, the traffic stream generator generates and releases packets to the equipment under test. *Gerrevink* discloses sending data packets to the equipment under test during a traffic stream. Although *Gerrevink* does not use the term “transaction”, those data packets are being transferred between the traffic stream generator and a router (equipment under test) to simulate live internet traffic.

Rather than refuting the Applicant’s previous arguments, the Examiner’s response actually reinforces Applicant’s position that *Gerrevink* only generates and transmits packets, but does not receive and does not conduct transactions.

Since *Gerrevink* clearly does not disclose the elements “setting up for engaging in transactions with the system under test” and “engaging in transactions with the system under test” as recited in claims 1, 15, and 21, the rejection of claims 1, 15, and 21 is in error and should be withdrawn.

Claims 27-45

Independent claim 27 recites a system for testing a system under test, and independent claim 35 recites a method performed by the system of claim 27. It is respectfully submitted that the rejection of claims 27 and 35 is in error because *Van Gerrevink* does not expressly or inherently disclose the elements “generating interactive transactions across the communications network with the system under test”.

The Merriam Webster Unabridged Dictionary (<http://unabridged.merriam-webster.com>) contains the following definition of the term “interactive”: “of, relating to, or being a two-way electronic communication system (as a telephone, cable television, or a computer) that involves a user's orders (as for information or merchandise) or responses (as to a poll or prompt)”. Thus claims 27 and 35 also require bidirectional communication between the test apparatus and the system under test. As discussed with respect to the rejection of claims 1, 15, and 21, *Van Gerrevink* describes a traffic generator that only transmits a simulated mix of network traffic. *Van Gerrevink* does not describe or suggest a test system conducting two-way interactive communications with a system under test.

Since *Van Gerrevink* fails to expressly or inherently disclose “generating interactive transactions across the communications network with the system under test”, it is respectfully submitted that the rejection of claims 27 and 35 is in error and should be withdrawn.

Conclusion

It is submitted that the independent and dependent claims include other significant and substantial recitations which are not disclosed in the cited references. Thus, the claims are also patentable for additional reasons. However, for economy the additional grounds for patentability are not set forth here.

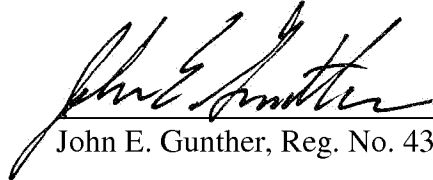
Appl. No. 10/646,983
Pre-Appeal Brief Request for Review Dated 4/23/2010

In view of all of the above, it is respectfully submitted that the present application is now in condition for allowance. Reconsideration and reexamination are respectfully requested and allowance at an early date is solicited.

The Examiner is invited to call the undersigned to answer any questions or to discuss steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Date: April 23, 2010


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